

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARELIUS MCMURRAY,

Petitioner,

2:05-cv-0541-GEB-DAD-P

vs.

SCOTT KERNAN, Warden,

Respondent.

ORDER

---

Petitioner, a state prisoner proceeding pro se, has filed an untimely notice of appeal of this court's September 15, 2005 denial of his application for a writ of habeas corpus. Petitioner has requested a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either state the reasons why such a certificate should not issue, or issue a certificate of

1 appealability indicating which issues make the required showing.  
2 Fed. R. App. P. 22(b) .

3 For the reasons set forth in the magistrate judge's  
4 findings and recommendations, filed June 28, 2005, petitioner has  
5 not made a substantial showing of a denial of a constitutional  
6 right. Accordingly, a certificate of appealability should not  
7 issue in this action.

8 IT IS HEREBY ORDERED that petitioner's December 6, 2005  
9 request for certificate of appealability is denied, and no  
10 certificate of appealability shall issue.

11 DATED: December 19, 2005

12 /s/ Garland E. Burrell, Jr.  
13 GARLAND E. BURRELL, JR.  
14 United States District Judge

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26